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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 27, 2002

APPLICATION OF

ROBERT A. WINNEY, D/B/A  
THE WATERWORKS COMPANY OF  
FRANKLIN COUNTY

CASE NO. PUE000665

To change rates and charges

FINAL ORDER

Before the Commission is the application of Robert A. Winney, d/b/a The Waterworks Company of Franklin County ("The Waterworks Company" or "Company"), to change rates and charges as provided by the Small Water or Sewer Public Utility Act ("Small Water Act"), §§ 56-265.13:1 through 56-265.13:7 of the Code of Virginia. In the Report of Alexander F. Skirpan, Jr., Hearing Examiner of February 21, 2002 (the Report), Examiner Skirpan recommended that The Waterworks Company's current schedule of rates and charges, including its availability charge, remain in effect without revision. No comments on the Report were filed. Upon consideration of the applicable statutes and the record in this proceeding, the Commission will adopt the examiner's recommendation that the Company's current rate structure remain in effect.

As discussed in the Report, at 1-2, this application has had a complex history. By Order for Notice and Hearing of December 12, 2000, the Commission docketed The Waterworks Company's application and scheduled a public hearing for March 20, 2001, before a hearing examiner. On March 12, 2001, the Company requested leave to withdraw the application. By Hearing Examiner's Report of March 16, 2001, the examiner recommended to the Commission that the application be dismissed.

The Commission determined that the matter should not be dismissed but should proceed to hearing as directed by our Order Remanding Case to Examiner of July 6, 2001. While the examiner had recommended that the Commission grant The Waterworks Company leave to withdraw its application, we remanded the case to develop a record. In particular, we directed the Commission Staff to present evidence on the Company's availability charge in light of our Order of March 20, 2001, in B&J Enterprises, L.C., Case No. PUE990616.

As we discuss in the following paragraphs, the Commission will allow The Waterworks Company's availability charge to remain in effect. Our decision, based on the record in this proceeding, to allow the charge to remain in effect does not alter the determination that led the Commission to remand the case. As we found in our Order Remanding Case to Examiner of July 6, 2001, the Small Water Act confers authority to review

the reasonableness of a charge after the small water company initiates the statutory process for changing its rates and charges. The Small Water Act reduces the regulatory burden on small companies and limits the Commission's jurisdiction. An applicant for rate relief under the Small Water Act may determine that pursuing an application is not productive and withdraw. However, when a rate, charge, rule, or regulation is questioned and testimony or other information supporting the challenge is offered, the Commission is empowered and obligated to consider the matter, and leave to withdraw may be denied in those circumstances.

In the Report, at 9-11, the Examiner reviewed the evidence offered by the Staff to establish that an availability charge was not just and reasonable. Examiner Skirpan found that the Staff had not satisfied its evidentiary burden, and the Commission will not disturb that finding. The annual availability charge will remain in effect to the extent required by a contract, covenant, equitable servitude, or the like which is independent of the Company's tariff. Commonwealth, ex rel. Ott v. Wintergreen Valley Utility Co., L.P., 1998 S.C.C. Ann. Rep. 352, 354. Further, as with any of the Company's rates, charges, rules, or regulations, it may be subject to challenge in any future proceeding.

Likewise, as long as the charge remains in effect, it must be applied uniformly. The record establishes that The Waterworks Company has not billed all lot owners for the charge. It appears that the Company has not made an effort to collect the annual availability charge from some developers or investors. Such a practice is contrary to the requirement for uniformity of charges in the Small Water Act, § 56-265.13:4 of the Code of Virginia, and the Company must apply the charge to all lot owners.

In this application, The Waterworks Company proposed a connection charge, which the Commission rejects. The Company did not establish that it incurs any cost in connecting a new customer to its system. Rather, the customer bears the costs of labor and materials to connect a residence to the system. Based upon the record before us, we find that a connection charge or fee is unjust and unreasonable. Our decision based on the record before us does not preclude The Waterworks Company from imposing a connection fee or charge in the future. The Waterworks Company might establish in a future rate proceeding that a cost-based connection fee is just and reasonable and should be in its tariff. As shown in the record, The Waterworks Company does not comply with all requirements of the Virginia Department of Health. A properly designed connection charge or

fee may be a means of recovering certain costs of necessary improvements reasonably allocable to new connections.

While the Commission denies any increase in rates and charges, a refund will not be ordered. On March 29, 2001, the Company filed with the Clerk a statement that, following withdrawal of its application, it had voluntarily refunded any sums due customers that had paid the proposed rates.

Finally, the Commission will take notice of the Order of November 16, 2001, in Commonwealth of Virginia v. Robert A. Winney, File No. 01-01-4647 (Franklin Co. Cir. Ct.). By the Order of November 16, 2001, in a proceeding initiated by the Virginia Department of Health, the Circuit Court appointed David Talbott as receiver for The Waterworks Company. While the Commission may consider this receivership or related matters in the future, those issues are not now before us. The Waterworks Company holds a certificate of public convenience and necessity granted by the Commission, and we have found that its schedule of rates and charge meets the requirements of the Small Water Act. Until the Commission may order any revisions to its certificate or its tariff, the Commission expects the Waterworks Company to continue its current operations. We likewise expect the Company to comply with this order.

Based upon the record in this proceeding, the Commission finds as follows:

(1) The use of a test year ending November 30, 2000, is proper in this proceeding;

(2) The Waterworks Company's test year operating revenues, after all adjustments, were \$16,440;

(3) The Waterworks Company's test year operating revenue deductions, after all adjustments, were \$10,956;

(4) The Waterworks Company's test year operating income, after all adjustments, was \$5,484;

(5) The Waterworks Company's adjusted test-year rate base was \$33,267;

(6) The Waterworks Company's current rates produce a return on adjusted rate base of 16.484%;

(7) The Waterworks Company's rates and charges now in effect are just and reasonable and should remain in effect;

(8) The Waterworks Company has not established any cost that the utility incurs in connecting a customer and any connection charge or fee would be unjust and unreasonable;

(9) The Waterworks Company may continue to collect its annual availability charge, but such a charge must be collected from the owners, including investors or developers, of all lots within the Company's service territory;

(10) As of the end of the test year, any vehicle loans, mortgages, or other loans provided by Robert A. Winney to The Waterworks Company of Franklin County that may be reflected on

the Company's books and records have been repaid in full by the Company's ratepayers and should no longer be reflected in the books and records;

(11) The Waterworks Company should maintain its books in accordance with the Uniform System of Accounts for Class C Water Utilities adopted by the Commission;

(12) The Waterworks Company should maintain property records on capitalized plant items;

(13) The Waterworks Company should maintain logs of employee time devoted to Company activities, long distance telephone calls, and mileage for Company activities; and

(14) The Waterworks Company should file an Annual Financial and Operating Report with the Commission's Division of Public Utility Accounting.

Accordingly, IT IS ORDERED THAT:

(1) The Company's application to change rates and charges pursuant to the Small Water or Sewer Public Utility Act, §§ 56-265.13:1 through 56-265.13:7 of the Code of Virginia, is denied.

(2) The Company maintain records and logs in accordance with findings (11), (12) and (13) above and file an annual report in accordance with finding (14) above.

(3) Based on the evidence in this case, in future proceedings before the Commission, no application, financial statement, or other document shall reflect any vehicle loans,

mortgages, or other loans provided by Robert A. Winney to The Waterworks Company of Franklin County.

(4) This application be dismissed and removed from the Commission's docket.